

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

THE UNITED STATES OF AMERICA  
FOR THE USE AND BENEFIT OF  
MCKINSTRY CO., LLC,

Plaintiff,

v.

CHEROKEE CONSTRUCTION  
SERVICES, LLC; and OLD REPUBLIC  
SURETY COMPANY, Bond  
No. YCN5422575,

Defendants.

No. 3:23-cv-05784-BHS

STIPULATION AND  
ORDER RE CONTINUED STAY OF  
PROCEEDINGS

**[CLERK'S ACTION REQUIRED]**

COMES NOW, Plaintiff McKinstry Co., LLC ("McKinstry"), Defendant, Cherokee Construction Services, LLC ("Cherokee") and Defendant Old Republic Surety Company ("Old Republic"), (collectively, the "Parties") through their counsel of record, to present the following stipulation for a continued stay of proceedings and a continuance of any court deadlines related to the above-captioned action.

STIPULATION AND ORDER RE CONTINUED STAY OF  
PROCEEDINGS – 1  
3:23-cv-05784-BHS

1 The Parties stipulate to the following facts:

- 2 1. A Complaint was filed by McKinstry in the above-captioned action.
- 3 2. The above-entitled action concerns a Miller Act Claim for subcontract work
- 4 by McKinstry for Cherokee.
- 5 3. The subcontract work concerns a construction project where Cherokee is
- 6 acting as the General Contractor and for which the US Army Corps of
- 7 Engineers (“USACOE”) is the Owner.
- 8 4. Cherokee has submitted a Contract Disputes Act claim against USACOE
- 9 hereinafter referred to as the “Owner Claims.” The Owner Claims include
- 10 the majority (but not the entirety) of McKinstry’s claims against Cherokee
- 11 brought in this action.
- 12 5. Old Republic is the surety for Cherokee’s payment bond.
- 13 6. On June 5, 2024, the parties submitted a stipulation requesting this action be
- 14 stayed pending Cherokee’s pursuit of the Owner Claims before the Armed
- 15 Services Board of Contract Appeals (“ASBCA”). The Court granted the stay
- 16 by order dated June 6, 2024. (Document 14)
- 17 7. On several successive occasions thereafter, the parties agreed to continue the
- 18 original stay to allow Cherokee to pursue mediation with the USACOE of the
- 19 Owner Claims in the hopes of cost effectively resolving McKinstry’s claims
- 20 in this action. In June 2025, the USACOE rejected Cherokee’s mediation
- 21 proposal.
- 22 8. On June 30, 2025, the parties submitted a Joint Status Report to this Court
- 23 (Document 22) advising of the USACOE’s rejection of mediation and jointly
- 24 requesting the stay in this action be lifted with the parties to submit a jointly
- 25

1 proposed amended case schedule on or before July 18, 2025. The Court  
2 officially lifted the stay on July 1, 2025. (Document 23)

3 9. All parties to this action have since agreed to pursue direct settlement  
4 negotiations and potentially mediation (without USACOE involvement) of  
5 the claims in this action while the Cherokee-USACOE action before the  
6 ASBCA is ongoing.

7 10. To facilitate direct settlement negotiations and avoid unnecessary costs and  
8 attorneys' fees in this action, all parties have agreed to a continued stay of  
9 this action for at least three (3) months to allow direct settlement negotiations  
10 and/or mediation to proceed.

11 11. By entering into this stipulation, the Parties are attempting to avoid  
12 unnecessary costs and fees, and neither party waives any claims,  
13 counterclaims, affirmative defenses, or defenses, and all such rights are  
14 expressly reserved.

15 12. Based on the above facts, the Parties jointly move, stipulate, and agree to,  
16 entry of an order by the Court in the above-titled action:

- 17 a. staying proceedings for three (3) additional months;  
18 b. continuing any deadlines for three (3) additional months; and  
19 c. requiring the Parties to file with the Court, no later than three (3)  
20 months from the entry of the order below, a joint report regarding the  
21 status of settlement negotiations/mediation, and the Parties' positions  
22 as to any further extension of the stay and continuance.  
23  
24  
25

1 DATED This 18th day of July 2025.

2 **AHLERS CRESSMAN & SLEIGHT PLLC**

**SOKOL, LARKIN, WAGNER & STORTI LLC**

3  
4 By: /s/ Bruce A. Cohen (per email  
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**ORDER**

Pursuant to the above stipulation, this action and all related deadlines are STAYED for a period of three (3) months from the date of entry of this Order. No later than three (3) months from the date of entry of this Order, the Parties shall file with the Court, a joint report regarding the status of settlement negotiations/mediation, and the Parties' positions as to any further extension of the stay and continuation.

IT IS SO ORDERED this 21st day of July, 2025.



BENJAMIN H. SETTLE  
United States District Judge

Presented by:

**AHLERS CRESSMAN & SLEIGHT PLLC**

**SOKOL, LARKIN, WAGNER & STORTI LLC**

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